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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 75-383

CITY OF LOUISVILLE
FRANK W. BURKE
GEORGE BURTON
COL. C. J. HYDE
LT. ELMER JOHNSON
PATROLMAN WALTER MEDLEY - **Petitioners**

versus

MARJORIE GLASSON - - - - **Respondent**

RESPONSE TO PETITION FOR WRIT OF CERTIORARI UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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BRIEF FOR RESPONDENTS IN OPPOSITION

The Respondents pray that this Court deny the petition to issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this case on June 13, 1975.

QUESTIONS PRESENTED

I.

Whether the Sixth Circuit correctly applied this Court's decision in *Wood* v. *Strickland* in ordering relief for Respondent on a 42 U.S.C. §1983 claim?

II.

Whether the Sixth Circuit correctly ruled that Respondent was also entitled to relief under 42 U.S.C. §1985, in that a conspiracy was committed?

STATEMENT OF THE CASE

Respondent accepts Petitioners' statement of the case.

REASONS FOR DENYING THE WRIT

Certiorari should be denied because:

1. The Sixth Circuit correctly decided that there was a violation of 42 U.S.C. §1983, in that Respondent was denied her constitutional rights and Petitioners are liable for damages because of their actions.
2. The Sixth Circuit correctly found that there had been a violation of 42 U.S.C. §1985 in that Petitioners did conspire to violate Respondent's constitutional rights.

I.

The Sixth Circuit has correctly interpreted the decisions of this Court in reversing the District Court.

The key issue in this case is whether or not the Petitioners were entitled to a defense based on "good faith". The leading case at the time the District Court ruled was *Pierson* v. *Ray,* 386 U. S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967). The District Court found, as a matter of law, based on statements made by Petitioners that they were entitled to a "good faith" defense. The Sixth Circuit applying this Court's decision in *Wood* v. *Strickland,* 420 U. S. 308, 95 S. Ct. 992, 43 L. Ed. 2d 214 (1975) found that this defense has its limitations. This Court stated in *Wood:*

> "The official must himself be acting sincerely and with a belief that he is doing right, but an act violating a student's constitutional right can be no more justified by ignorance or disregard of settled, indisputable law on the part of one entrusted wtih supervision of student's daily lives than by the presence of actual malice.
>
> * * * * * *
>
> . . . a school board member . . . must be held to a standard of conduct based not only on permissible intentions, but also on knowledge of the basic, unquestioned constitutional rights of his charges".

Here we are dealing with three police officers, one the Chief of Police, who surely can be held to a higher standard than lay persons as to what is and isn't constitutionally permissible.

Respondent was standing on a public sidewalk, holding a sign, which she hopefully sought would be seen by President Nixon as his motorcade passed.

It has often been said that publicly owned streets, sidewalks, and parks are so historically associated with the exercise of First Amendent rights that access to them for purposes of exercising these rights cannot be denied absolutely. *Lloyd Corporation, Ltd.* v. *Tanner,* 92 S. Ct. 2219, 407 U. S. 551, 33 L. Ed. 2d 131 (1972); *Lowell* v. *Griffin,* 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949 (1938); *Hague* v. *C.I.O.,* 307 U. S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939); *Schneider* v. *State.* 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939).

As the Sixth Circuit found, Respondent was in a place where she had a right to be, at a time that was appropriate, and was conducting herself peacefully and lawfully.

Petitioners sole basis for destroying her sign was that it evoked a hostile reaction by a group of people.

42 U.S.C. §1983 imposes a duty on police officers. That duty includes the obligation not to ratify a "heckler's veto". Furthermore, their obligation was to protect Respondent from those threatening to deny her her constitutional rights. E.g. *Sellers* v. *Johnson*, 163 F. 2d 877 (6 Cir.) (1947).

In fact there would be no question that had Respondent been arrested, that conviction would be reversed. *Street* v. *New York,* 394 U. S. 576, 89 S. Ct. 1354, 22 L. Ed. 2d (1969); *Terminello* v. *Chicago,* 337 U. S. 1, 69 S. Ct. 894, 93 L. Ed. 1131 (1949).

Medley and Johnson went so far as to state that would have allowed the crowd to take the sign away from her, because they decided that its contents were "detrimental" and provocative.

Thus the Respondents totally ignored the basic, indisputable law of this land. In *Cox* v. *Louisiana,* 379 U. S. 536, 555, 85 S. Ct. 453, 13 L. Ed. 2d 471 (1965) this Court stated:

> "Yet, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."

When we look at the defense of good faith, we must look to all the facts in each particular case. There is no question that Petitioners violated the Respondent's constitutional rights. Moreover as stated by Judge McCree:

> "We cannot permit a police officer to avoid liability for damages by pleading ignorance of the law when he unreasonably or in bad faith oversteps the bounds of his authority and invades the constitutional rights of others." (App. 48-49)

There was no evidence in the record that the placard posed any threat to the President or anyone else. In fact there was no overt action, outside of heckling taken by the so-called "mob". Reinforcements, though available were not called. The crowd was not admonished.

The District Court found that the sign was "inflammatory" and although he stated that the progress of the motorcade might be impeded, there was no evidence that the motorcade was even in the vicinity.

Based on the theory of Petitioners there could never be a sign that would cause any rancor and every police officer could, based on his own determination, decide what, if any, protest would ever be allowed.

Surely every man, woman, and child in this country knows that you have a right to protest peacefully. Yet here three police officers testified that you do not. Their actions are apalling in our free society.

It could not possibly be stated better than Judge McCree did:

> "The actions and attitudes of appellees Medley and Johnson thus bespeak a *callous disregard* of Miss Glasson's right to express and to advocate peacefully her ideas and exhibit *shocking disregard* of her right to have her person and property protected by the state from violence at the hands of persons in disagreement with her ideas." (App. 51) (Emphasis added)

The Sixth Circuit correctly applied the criteria to be used in 42 U.S.C. 1983, as most recently enunciated by this Court in *Wood* v. *Strickland,* supra and the Writ should be denied.

II.

The Sixth Circuit correctly found that Petitioners violated 42 U.S.C. 1985 in that a conspiracy based on a "class-based, invidiously discriminatory anamus" was committed. *Griffin* v. *Breckinridge,* 403 U. S. 88, 91 S. Ct. 1790, 29 L. Ed. 2d 338 (1971).

That such a class existed is indisputable. All three officers testified that signs "detrimental" or "injurious" to the President would not be allowed (App. 34).

This Court has never ruled that the class be based on race. The Sixth Circuit on following *Snowden* v. *Hughes,* 321 U. S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944) has held it does not. E.g. *Cameron* v. *Brock,* 473 F. 2d 608 (6 Cir. 1973); *Azar* v. *Conley,* 456 F. 2d 1382 (6 Cir. 1972).

For all the rhetoric about the "heat of the moment" the fact remains that the decision was made to remove "objectionable" signs when Chief Hyde gave the orders of the day. Presumably the sign would have been removed regardless of the reaction of the crowd.

Again, Judge McCree said it best:

> "The record is thus unmistakably clear that appellees intended to permit no criticism of the President that day. A more invidious classification than that between persons who support government officials and their policies and those who are critical of them is difficult to imagine."

CONCLUSION

There can be no question the Sixth Circuit was correct in reversing the District Court and for that reason the Writ should be denied.

Respectfully submitted,

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